

# VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

## PUBLIC SERVICE ANNOUNCEMENT



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### VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY ANNOUNCES POLICY ON PREVENTING MISCLASSIFICATION OF WORKERS IN VIRGINIA OCCUPATIONAL SAFETY AND HEALTH CASES

**RICHMOND, VA** – Commissioner C. Ray Davenport announced today the adoption of a new Virginia Occupational Safety and Health (VOSH) policy directed at preventing the misclassification of workers in VOSH cases.

"The Department today is committing itself to aggressively pursuing Governor McAuliffe's initiative to root out the destructive practice of misclassification of workers in Virginia. Misclassification of workers as independent contractors constitutes payroll fraud, and denies hard-working Virginia employees of basic legal protections such as workers' compensation, family and medical leave, and unemployment insurance. Misclassification also cheats those honest employers and contractors who properly classify employees, since employers who misclassify can undercut their bids due to lower operating costs."

In response to a [2012 Report of the Joint Legislative Audit and Review Commission](#) (JLARC), which identified and defined the problem of worker misclassification, Governor Terry McAuliffe issued [Executive Order 24](#) on August 14, 2014, entitled "Establishing an Inter-Agency Task Force on Worker Misclassification and Payroll Fraud":

"The misclassification of employees as "independent contractors" undermines businesses that follow the law, deprives the Commonwealth of millions of dollars in tax revenues, and prevents workers from receiving legal protections and benefits."

Beginning today, the Department will conduct an outreach program to educate and inform employees, the employer community and the general public on the debilitating effects of misclassification on Virginia's economy. Beginning July 1, 2015, the Department will implement a new policy to combat worker misclassification.

### **NEW POLICY**

The VOSH Program conducts thousands of occupational safety and health workplace inspections on a yearly basis, and starting July 1, 2015, will implement the following policy where it has reasonable cause to believe that worker misclassification has occurred in a VOSH case:

- In the event that VOSH citations and penalties are proposed for the employer, penalty reductions for size and good faith will NOT be afforded to the employer.
- On construction multi-employer worksites, each contractor (e.g., general contractors, prime subcontractors and lower tier subcontractors) will be asked to provide proof of their Department of Professional and Occupational Regulation (DPOR) contractor's license AND proof of the DPOR license for any of its' subcontractors.
- When it is determined that a construction employer has contracted with an unlicensed subcontractor, VOSH will make a written referral to DPOR for the contractor and its unlicensed subcontractor (DPOR sanctions for contracting with unlicensed subcontractors may include fines, probationary terms, suspension or license revocation).
- In cases where the contract value for the specific subcontractor's job is less than \$1,000.00, VOSH will make a written referral to the Virginia Employment Commission (VEC) and/or the Virginia Workers' Compensation Commission (VWCC) for potential audits of the employer's employment practices. There may be instances where referrals will be made for contract values over \$1,000.00 as well.

A complete copy of the new policy and education and outreach materials can be found at:

[www.doli.virginia.gov](http://www.doli.virginia.gov).

VOSH offers [On-Site Consultation Services](#) to help employers better understand and voluntarily comply with VOSH standards, identify and correct hazards, train employees and develop safety and health programs. Priority is given to high hazard workplaces with 250 or fewer employees and all services are offered to employers at no cost. The [Safety and Health Achievement Recognition Program](#) (SHARP) recognizes worksites that operate exemplary safety and health programs. Additional information can be obtained by contacting the Virginia Department of Labor and Industry office closest to you at [www.doli.virginia.gov](http://www.doli.virginia.gov) or by calling Jennifer Rose, CSP, Consultation Program Manager at (804) 786-8707 or [Rose.Jennifer@dol.gov](mailto:Rose.Jennifer@dol.gov).

VOSH also offers another voluntary protection recognition program - the [Virginia Voluntary Protection Program](#) (VPP). The Virginia VPP is designed to recognize and promote exceptional safety and health management programs, generally for larger employers. Additional information can be obtained by contacting the Virginia Department of Labor and Industry office closest to you at [www.doli.virginia.gov](http://www.doli.virginia.gov) or by calling Milford Stern, VPP Program Manager at (540) 562-3580, ext. 123 or [Stern.Milford@dol.gov](mailto:Stern.Milford@dol.gov).

The Virginia Occupational Safety and Health (VOSH) program is financed with 50% state funds and 50% federal funds in the form of a grant from the U. S. Department of Labor – OSHA, under §23(g) of the Occupational Safety and Health Act of 1970.

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